HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.21623 of 2006

Dated:26.10.2006

Between:

M/s.Tirumala Industries.

…Petitioners

and

Transmission Corporation of A.P.Limited and others.

…Respondent

HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.21623 of 2006

ORDER:

The petitioner-Firm is running a rice mill. For that purpose it has availed power supply under L.T.Category-III Service Connection bearing No.1810. The second respondent herein inspected the petitioner's premises and found the following incriminating points.

i) One no. CT chamber seal with bit no.X6968 is in tampered condition during the inspection, seal bit is easily coming out from seal wire.

ii) Removed the tampered seal and opened the CT chamber and observed that the 3 potential wire leads at CT tapping points are disturbed i.e., 3 nos. leads were removed rebinded and taped temporarily with three different colour tape. Thus the consumer intentionally tampered the seal and used the supply dishonestly. Hence the pilferage of energy case is booked.

On the above allegations, the second respondent came to a *prima facie* conclusion that the petitioner is guilty of theft of electricity under Section 135 of the Electricity Act, 2003 (for short 'the Act'). He provisionally assessed the value of the pilfered energy at Rs.5,41,832/- purportedly under Section 154(5) of the Act and informed the petitioner that power supply is disconnected and if it wants to avail

reconnection it has to pay 50% of the amount. The petitioner was also informed that in addition to the charges it is liable for prosecution under Section 135 of the Act. The said Provisional Assessment Order/notice is assailed in the Writ Petition.

As a reviewing Court, this Court is not inclined to go into factual dispute. Being well aware of this, the learned Counsel for the petitioner submits that even if there is unauthorized use of electricity or alleged theft of electricity, the respondents cannot disconnect power supply, unless a Final Assessment Order is passed under Section 126(3) of the Act or appropriate orders are passed by the Special Court under Section 154 of the Act. He has placed reliance on the judgment of the Division Bench of this Court in W.A.No.452 of 2004, dated 11.03.2004 (M/s.Mallikarjuna Polishing Industries v. Chief Managing Director, A.P.Transco). The Division Bench in the above cited case after referring to the provisions in Chapter XII of the Act observed as under.

> …Chapter XII of the new Act deals with the investigation and enforcement. Section 126 provides for the process for making assessment, provisional and final, if on an inspection the equipments, gadgets, machines, devices are found to be tampered with or there is unauthorized use of electricity. **There is no such power, while issuing provisional assessment, to forthwith stop or disconnect electricity supply. Provisional Assessment is in the nature of a show cause notice against which the consumer is entitled to have an opportunity of hearing before passing final order of assessment by the concerned authority. As such the notices dated 7.1.2004 will be deemed to have been issued only under Section 126 of the Electricity Act under which there is no authority or power to respondents to discontinue or disconnect the electricity supply or call upon the appellants to pay even part of the provisional assessment amount till final assessment is made.** Only on the appellants not complying with the final assessment orders, the respondents can proceed further in the matter and that will also be subject to the appeals to be filed by the appellants. Consequently, we allow the appeals, set aside the impugned order passed by the learned single Judge and allow the writ petitions with a direction that electricity supply to the premises of the appellants shall be restored forthwith and the concerned authority will proceed to pass final order in the facts and circumstances of the case after affording opportunity of being

heard to the appellants.

(Emphasis supplied)

Learned Counsel for the respondents Sri A.Bhuvana Sunder Reddy, representing the learned Counsel Sri V.Ajay Kumar, however, submits that doubting the above ratio, the matter has now been referred to the Full Bench. The same does not, however, take away the binding nature of the observations made by the Division Bench as above.

Therefore, following the observations of the Division Bench, this Writ Petition is disposed of in the following manner.

i) The respondents are directed to restore the power supply to the petitioner immediately without insisting on payment of the half of the provisionally assessed value of the alleged pilfered energy;

ii) It shall be open to the petitioner to compound the allegation/contravention, if so advised;

iii) In case the petitioner fails to compound the contravention, the respondents shall immediately send the case to the Special Court constituted under Section 153 of the Act, in which case, it shall be open to the petitioner to raise all its grounds before the Special Court.

The Writ Petition, with the above observations, is accordingly disposed of. No costs.

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(V.V.S.RAO, J)

26.10.2006

Note: Issue C.C by tomorrow.

B/o.

vs